

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
To: The Wireless Telecommunications Bureau		

**REQUEST FOR LIMITED WAIVER**

Whidbey Telephone Company ("Whidbey"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,<sup>1</sup> hereby requests a limited waiver of the June 30, 2002, deadline by which digital wireless systems must be capable of transmitting 911 calls from Text Telephone Devices ("TTY"). This requirement was imposed by the *Fourth Report and Order* in the above-captioned docket and Section 20.18 (c) of the Commission's Rules.<sup>2</sup>

Whidbey's broadband personal communications services ("PCS") network was constructed using GSM technology. Switching (as well as certain other functionalities) for Whidbey's PCS operation is being provided by AT&T Wireless Services, Inc. and/or one or more of its affiliates ("AWS"). AWS is a PCS provider that has extensive GSM operations. AWS has advised Whidbey that TTY capability on Whidbey's network will need to be delayed for up to three months (until September 30, 2002) due to technical problems encountered with the implementation of switch software containing a TTY solution. Because Whidbey's

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<sup>1</sup> 47 C.F.R. §§ 1.3, 1.925.

<sup>2</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 FCC Rcd 25216 (2000); Section 20.18(c) of the Commission's Rules provides, "Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY)." 47 C.F.R. § 20.18 (c). A note to Section 20.18(c), also referred to as "Paragraph (c)," provides, "Operators of digital wireless systems must begin complying with the provisions of this paragraph on or before June 30, 2002."

compliance with Section 20.18 (c) is dependent on the successful installation and testing of this software by AWS or its vendor, Whidbey requests a limited waiver of the E911 TTY compatibility requirement until such time as AWS is able to provide this capability to Whidbey. In support of Whidbey's request, the following is shown:

**I. BACKGROUND**

Whidbey is a small rural telephone company and the holder of broadband PCS F-Block licenses under Call Signs KNLG248 (Aberdeen, Washington BTA), KNLG842 (Bremerton, Washington BTA) and KNLG844 (Port Angeles, Washington BTA), as well as a D-Block broadband PCS license under Call Sign KNLG517 (Port Angeles, Washington BTA). Switching for Whidbey's PCS network is being provided by AWS. Therefore, Whidbey is dependent on AWS and its vendor(s) for the implementation of various switch-based technical capabilities, such as TTY access. AWS recently informed Whidbey that AWS would be unable to provide TTY capability to Whidbey's network on or before June 30, 2002, because of numerous technical problems encountered when implementing certain new switch software. Whidbey understands that AWS and its vendor are attempting to resolve these problems by September 30, 2002; the circumstances and AWS' efforts are documented for the Commission in the recent petition for limited waiver filed by AT&T Wireless Services, Inc.,<sup>3</sup> and Whidbey hereby refers thereto in support of Whidbey's request for a limited waiver of the June 30, 2002 TTY compliance deadline.

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<sup>3</sup> See Petition for Limited Waiver, CC Docket 94-102, filed June 7, 2002 ("AWS Petition").

## II. GOOD CAUSE EXISTS FOR WAIVER OF THE JUNE 30, 2002 DEADLINE

Good cause exists for the FCC to grant Whidbey's request for a limited waiver of the June 30, 2002 TTY compliance deadline.<sup>4</sup> Good cause is shown and waiver of a rule is appropriate if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>5</sup> Similarly, under the Commission's rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>6</sup> The Commission has consistently concluded that waiver of a regulatory deadline is appropriate when non-compliance "is due to circumstances beyond the licensee's control."<sup>7</sup> Moreover, in the context of other Section 20.18 regulations governing deployment of 911 location identification capabilities, the Commission has specifically recognized that "technology-related issues" delaying implementation could warrant grant of a waiver to allow for their resolution.<sup>8</sup>

In Whidbey's case, special circumstances exist because the necessary software for the AWS switch to provide digital TTY capability to Whidbey's GSM network was found to have numerous errors during the First Office Application ("FOA"). According to the *AWS Petition*,

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<sup>4</sup> The Commission may grant an extension or waiver of a compliance deadline for good cause shown. See 47 C.F.R. § 1.3.

<sup>5</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

<sup>6</sup> See 47 C.F.R. § 1.925(b)(3).

<sup>7</sup> E.g., Order, *McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to Construction of Cellular System for Market No. 15-A2*, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

<sup>8</sup> See Fourth Memorandum Opinion and Order, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 00-326, 15 FCC Rcd. 17442, 17459, ¶ 43 (2000) ("In the case of E911, we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that these cases could be dealt with through individual waivers as these implementation issues are more precisely identified.").

“[b]eginning on April 24 the FOA experienced a series of systematic fatal errors. By May 15, eight errors had been identified. Some of the bugs damaged network capacity or performance, directly impacting basic voice and data services for customers. Others created complete network failures.”<sup>9</sup> On the basis of these technical problems, AWS has sought a limited waiver to allow its vendor to complete any necessary repairs to its software.<sup>10</sup> Strict enforcement of the TTY compliance deadline against Whidbey in this instance would be inequitable and especially burdensome, whereas a grant of the requested limited waiver would serve the public interest. As a small carrier, Whidbey lacks the resources and market power that larger carriers can use to influence vendor delivery schedules and to participate in technology development and beta testing programs. To the extent that AWS does have such resources and is able to command a quick response from its vendors to these technical problems, it will allow Whidbey’s network to achieve TTY compliance much quicker than if Whidbey had to troubleshoot the switch software by itself or to wait for a vendor to make revisions generally available to its much smaller customers.

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<sup>9</sup> *AWS Petition* at p. 4.

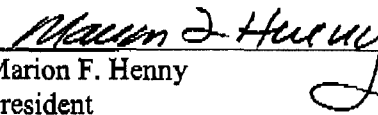
<sup>10</sup> *Id.* at p. 5.

### III. CONCLUSION

Based on the foregoing, Whidbey respectfully requests that the Commission grant it a temporary waiver of Section 20.18 (c) of the Commission's Rules and extend the E911 TTY deadline to permit Whidbey to achieve E911 TTY compliance on or before September 30, 2002.

Respectfully submitted,

**Whidbey Telephone Company**

By   
Marion F. Henny  
President

14888 SR 525  
Langley, WA 98260  
(360) 321-1111  
(360) 321-8118 (fax)

John A. Prendergast  
D. Cary Mitchell  
Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast  
2120 L Street, NW Suite 300  
Washington, DC 20037

(202) 659-0830  
(202) 828-5568 (fax)

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